

EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL YOU ARE TOLD TO BEGIN.

THIS EXAM WILL LAST 2½ HOURS. It is a modified OPEN BOOK exam. You may use any notes you have made yourself, your textbook, and any outlines that I have distributed to you. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc.

While waiting for the exam to begin, be sure that you have written your EXAM NUMBER on each bluebook AND ON THE MULTIPLE CHOICE ANSWER SHEET, that you have read these instructions, and that you are otherwise ready to begin. For each of the questions, START A NEW BLUEBOOK.

THE MODEL PENAL CODE APPLIES TO ALL QUESTIONS, except for Question 2½. You are only responsible for those portions of the Code that were previously identified. When the question asks whether a person could be charged with or prosecuted for a crime, answer based on an evaluation of whether, on the facts given, a judge would grant a motion to dismiss the charge; if not, your answer should be yes.

(1) MULTIPLE CHOICE. Please select the *best* answer. Some answers may give a wrong reason for an otherwise correct result. Make sure that you read all the answers thoroughly and select the one that comes closest to a correct statement of the law.

(2) ESSAYS: You will have two essay questions that ask for an analysis of the situation under the Model Penal Code. You will then have one question (2½) that asks about the differences that would obtain if the Model Penal Code were not used in this jurisdiction.

POINTS are assigned as follows:

Multiple Choice:	40 points;
Question 1:	35 points
Question 2:	50 points
Question 2½:	15 points

In the case of ambiguity, please consider the alternatives that could be reasonably be construed from the facts or the statute, and advise accordingly.

GOOD LUCK!

HAPPY HOLIDAYS!

MULTIPLE CHOICE

(Total: 40 points)

FACT PATTERN for QUESTIONS 1 THROUGH 4: Mike is a computer "hacker" who knows a lot about getting access to computers using his home computer. One day by chance he gets through to some kind of giant computer system that gives him the number and expiration dates of three valid credit cards. Using the the first credit card he calls up and orders a pizza, a new computer, and airline tickets. Eventually he is caught and charged with theft under Model Penal Code § 223.2(1).

1. Which of the following is correct?
 - a. Mike would be guilty of theft only if he actually ate the pizza, used the computer, or otherwise got some benefit from his activities.
 - b. Mike could not be prosecuted for theft if in previous cases courts had held that this Code section did not apply to situations like this.
 - c. Mike could not be prosecuted if he reasonably believed that his conduct was lawful.
 - d. If he were below the age of 16, Mike could only be subjected to the jurisdiction of the juvenile justice system.

2. Mike planned on eating the pizza and using the computer. He was going to give the airline tickets to his mother as a gift. He figured that the police would eventually catch up to him and he would have to give back the computer. Which of the following is correct:
 - a. Mike would be guilty of theft of the computer only if it was reasonably likely that he would be able to keep it permanently.
 - b. Mike would be guilty of theft of the computer if it was his desire to keep it permanently, even if a reasonable person in his position would know he would have to return it.
 - c. Mike would not be guilty of theft of the computer if it were shipped to him but he never opened the box.
 - d. Mike would not be guilty of theft of the airline tickets under § 223.2(1) since they are not "moveable property."

3. Mike's friend Bill watched while Mike ordered the pizza and the computer. Bill would be guilty of conspiracy to commit theft:
 - a. Only if he himself committed an overt act in furtherance of the conspiracy.
 - b. Only if he agreed with Mike that Mike should commit the crime.
 - c. Only if a substantial step was taken toward completion of the crime.
 - d. Both (a) or (b) are correct.

4. Acme Electronic Services placed an ad in a computer magazine for a computer program that would call credit card companies, attempt to get authorization using randomly generated credit card numbers, and record the ones that were successful. They charged \$29.95 for this program. Mike bought Acme's program and used it to get the credit card numbers. Would Acme be guilty of theft under § 223.2?
- Yes, if Acme had the purpose of promoting or facilitating the commission of Mike's theft.
 - Yes, if Acme had substantial knowledge of the purpose for which their program was being used.
 - Yes, if Acme derived significant income from this program and it knew that the program could be used for criminal purposes.
 - Either (a), (b) or (c).

FACT PATTERN for QUESTIONS 5 THROUGH 7: Jimmy Swinehart, a middle-aged TV evangelist, has a side to his personality that is not usually not highlighted during his TV program. He likes to read—or shall we say look at—magazines that portray or suggest acts that he denounces from the pulpit as immoral. One evening at 10 p.m. he was out on the street looking for female companionship. He went to a part of town where prostitutes are known to ply their trade. He entered a run-down hotel and began talking to a woman who introduced herself as "Sherri."

5. Suppose Sherri is 15 years old. If Swinehart has sexual intercourse with her, would he be guilty of rape, MPC § 213.1?
- No, so long as Sherri consents.
 - No, if Swinehart is unaware of her age.
 - Yes, if because of her age Sherri lacks the capacity to make an informed decision.
 - Yes, because Swinehart is more than four years older than she is.
6. Suppose Sherri is an undercover police officer, aged 24. Swinehart asks her how old she is and she says "Fifteen." Swinehart then takes her to one of the rooms, hands her \$100 and asks her to undress. At that point the officer arrests him. Would Swinehart be guilty of "Attempted Corruption of Minors" under MPC § 213.3? (For purposes of this question, ignore the possible application of §213.6(3).)
- No, because Sherri was not in fact below the age of 16.
 - No, because Swinehart did not come "dangerously close" to completing the crime.
 - No, because of the doctrine of legal impossibility.
 - Yes, if Swinehart had the purpose of engaging in sexual intercourse with her and thought she was fifteen years old.

7. Suppose Swinehart had seven martinis at a bar prior to the incidents described above. Intoxication would be relevant if:
- He claims to be unaware of the risk that Sherri was under the age of 16.
 - He is charged with a crime for which the required culpability is knowledge or purpose;
 - Intoxication makes him unaware of the criminality of his conduct.
 - None of the above.

QUESTIONS 8 through 10 DO NOT HAVE A FACT PATTERN TO ACCOMPANY THEM.

8. Identify the author of the following quotation: "The criminal law thus proceeds upon the principle that it is morally right to hate criminals, and it conforms and justifies that sentiment by inflicting upon criminals punishments which express it."
- Sir James Fitzjames Stephen
 - H.L.A. Hart
 - Herbert Packer
 - Jeremy Bentham
9. Identify the author of the following quotation: "It is, indeed, most highly desirable that men should not merely abstain from doing harm to their neighbors, but should render active services to their neighbors. In general, however, the penal law must content itself with keeping men from doing positive harm, and must leave to public opinion, and to the teachers of morality and religion, the office of furnishing men with motives for doing positive good."
- Oliver Wendell Holmes
 - Lord Macauley
 - Jerome Hall
 - Richard Posner
10. Roger and Gene agree to break into Betty's house to look for things to steal. While in the house Roger finds a portable stereo and a camera. He takes them both with him. He is later arrested at a pawn shop when the stolen items are identified. Which of the following is correct?
- Roger could be convicted of theft and burglary.
 - Roger could be convicted of theft or burglary, but not both.
 - Gene could be charged with conspiracy to commit burglary or with burglary, but not both.
 - Gene could be convicted of theft only if Roger is also convicted of theft.

ESSAY QUESTIONS

Question 1 (35 points)

Billy went into a liquor store with his hand in his pocket. Billy asked the person behind the cash register if he had any money for a poor person at Christmastime. The clerk said "No." Billy then said, "Well, if you aren't nice to poor people, bad things will happen," and he began looking at his hand in his pocket as though he had something there. "Are you threatening me?" asked the clerk. "Well, what makes you think that?" replied Billy with a sly smile. Then his smile disappeared, and he shouted at the top of his lungs, "You'd better give me some money or you'll be sorry!" The clerk, fearing that he might have a gun in his pocket, reached into the till and pulled out \$620. Billy pulled his hand out of his coat, grabbed the cash and sprinted out the door. On his way out the door he collided with Mrs. Gatzmeyer, an elderly woman who fell and broke her hip.

Billy was later arrested and your firm has been hired to handle his defense. At your interview with him Billy claims that he was just trying to "guilt-trip" the clerk into giving him some money, and that he didn't even see Mrs. Gatzmeyer on his way out. What is Billy's potential liability under the Model Penal Code?

Question 2 (50 points)

Wilson and Benson were traveling salesmen. They sold office products door to door. Their favorite "hunting ground" has been large office buildings, preferably more than 10 stories tall. They do "cold calling," which means that they walk into the office and make a sales pitch to whoever is available. Used to being brushed off, they first announce that they have a free gift which they will give to anyone who listens to their pitch. The "free gift" turns out to be a letter opener imprinted with the name of the office products company for which they work. Also, orders for products like manila file folders, ball-point pens, and xerox paper are accompanied by "bonus gifts" that run the gamut from room freshener to steak knives. Most companies turn them down cold, but about one in ten will buy something, and the prices are sufficiently inflated to cover their own sales commission and the cost of the "bonus gifts." One winter afternoon it was 5:00, and Wilson and Benson were on the 12th floor of the Columbia Enterprise Building. They had just struck out with their previous call, and came to a door with the title "Fantasy Productions, Inc." Benson turned the handle on the door and it didn't turn, but the door hadn't been pulled shut, so when Benson pushed it forward the door swung open. As they entered the reception area only a dim red light was on, and they didn't see anyone at the reception desk. Although there were windows to the outside, it was already dark outside, and so visibility was poor.

However, framed pictures on the wall showed men and women in various poses that led Wilson to believe that it was a company that was involved in the production or distribution of what he considered to be obscene materials. Wilson seemed to "snap"; he began to systematically go through the interior offices, opening doors and looking more and more tense. Benson yelled at him, "What are you doing? Let's get out of here!" but he didn't get any answer from Wilson. Wilson finally hollered "Here's their darkroom," and found a bottle of chemicals that said "Flammable" on it. Wilson poured half the bottle all over the floor and ignited it with a lighter he kept in his pocket. There was a brief eruption of flames, and then Wilson ran out. Benson followed Wilson into the hall; Benson saw a fire extinguisher and a fire alarm in the hallway, but when he went in the direction of them Wilson moved toward Benson in a menacing way, saying "Benson, you will burn too if you take sides with the forces of evil."

Benson then moved away from the fire extinguishers and toward the elevator, and as he did so Wilson got a far-away, glazed look in his eyes; he was mumbling incoherently about "Sodom and Gomorrah," and Benson was able to push and shove him into the elevator and out of the building to their car, parked on the street. Realizing that something had gone wrong with Wilson, Benson drove him to a local emergency room where Wilson was admitted for nervous exhaustion. (Fortunately, a sprinkler system within the office building put out the fire before it could cause any major structural damage or personal injury. The damage to Fantasy Productions, however, was extensive.)

Analyze Wilson's criminal exposure under the Model Penal Code, including any defenses he might assert.

Question 2½ (15 points)

What difference would it make, if any, to your analysis of Question 2 if the Model Penal Code had not been adopted in your jurisdiction?

EXAM NUMBER _____

MULTIPLE CHOICE ANSWER SHEET

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

TEAR THIS OFF AND PUT IT IN YOUR BLUEBOOK!